

DISTRICT COUNCIL REASONING OPPOSING REQUIREMENT OF A BOND TO APPEAL A ZONING COMMISSION OR BOARD OF ZONING ADJUSTMENT DECISION –

Opposing B26-0397 re appeal of BZA or ZC decisions

The Committee recalls that legislation similar to this was circulated (but maybe never introduced) five or six years ago. At that time it was in response to the substantial number of appeals being filed in Planned Unit Development (PUD) cases, and the surprising number of appeals that were affirmed against the Zoning Commission. The development community contended, with reason, that the appeals were having a deterrent effect on development – adding both substantial time and cost to the development process.

But since 2020 the Committee has addressed this situation in several ways, most notably by adding budget to the Office of Zoning to hire additional attorneys to write zoning decisions, and pressing the Office to write better quality decisions so that they are less likely to be appealed or overturned. The problem that existed before 2020 does not exist now.

Budget Report Years	PUDs Filed	PUDs Appealed	Cases Affirmed
2017-2020	35 cases	13 (37%)	4
2021-2024	23 cases	4 2 (8.7%)	0

Source: Office of Zoning responses to the Committee

Not only has the need to discourage appeals dissipated, but the approach taken by this subtitle, to limit who may appeal, is unwise and not in the public interest. Typically, a PUD has a broader impact on a neighborhood than the 200 foot circumference allowed by this bill. Typically, zoning changes involve important issues such as traffic management, and the effects on light and air, that would not qualify as a “particularized harm” suffered by one person.

Further, an important aspect of administrative procedure is whether an agency (Zoning Commission) erred on the facts or application of the law; these considerations would also be precluded by the subtitle. In this regard, currently ANC Commissioners may file appeals – asserting the rights of the ANC – but that would also be prevented by this subtitle. Finally, quality of life is important; often it is a fundamental issue in zoning cases. Communities should not be overly limited in their ability to protect or promote their quality of life, which this subtitle would do.

The Committee agrees, however, that the zoning approval process takes too long. There is always a delay between filing a zoning application and holding the public hearing -- giving all parties time to prepare takes time. And the more contentious cases can take time with multiple hearings. Additional time is needed after the hearing(s) for the parties to submit additional information and for the Zoning Commissioners to absorb the evidence to reach a decision.

But of concern is how long the Zoning Commission takes to issue an order after deciding a case. The Committee analyzed the 19 PUD cases filed since November 1, 2020 and found that the average (mean) time between Zoning Commission decision and issuance of the final order was 191 days. The median average (that is, half taking longer) was 183 days. That’s half a year additional to the lengthy process to get to the decision. The Committee feels strongly – and urges the Office of Zoning – to speed up the process to issue the final orders.

COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W. Washington
D.C. 20004

Memorandum

To : ~~Members of the Council~~

From : Nya  Council Date :

Tuesday, October 7, 2025

Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Office of the Secretary on Friday, October 03, 2025. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Zoning Decision Appeals Amendment Act of 2025", B26-0397 INTRODUCED BY: Chairman Mendelson, at

the request of Mayor

The Chairman is referring this legislation to Committee of the Whole.

Attachment

cc: General Counsel Budget Director Legislative Services

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A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Administrative Procedure Act to modify standing requirements for appeals of zoning decisions to be limited to only those who obtained party status in the administrative action or live within 200 feet and filed a letter in the administrative tribunal; to limit the time for an appeal of a zoning decision to 30 days from the action; to require appeals of zoning decisions to be accompanied by a statement of issues to the court that were raised at the lower level relating to the particularized harm suffered; to authorize bonds by courts to account for costs associated with the delay of an appeal; and to authorize the imposition of attorney's fees and other costs in actions where there the court finds that the appeal was frivolous or was filed for an improper purpose.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

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That this act may be cited as the "Zoning Decision Appeals Amendment Act of 2025".

Sec. 2. Section 11 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510), is amended by adding a new subsection (a-1) to read as follows:

"(a-1)(1) Judicial review under this section of an order or decision of the Zoning Commission, the Board of Zoning Adjustment, or the Mayor's Agent shall only be available to a person who:

35 “(A)(i) Was granted party status by the Zoning Commission, Board
36 of Zoning Adjustment, or Mayor’s Agent in the contested case for which the person seeks
37 judicial review;

38 “(ii) Owns or legally occupies a property within 200 feet of
39 the property that is the subject of the contested case and filed a letter of support,
40 opposition, or of no position in the contested case; or

41 “(iii) For the purposes of judicial review of an order or
42 decision of the Mayor’s Agent, is a historic preservation organization as defined in 10-C
43 DCMR § 9901;

44 “(B) Files a petition for judicial review within 30 days after the
45 order or decision is mailed or emailed to the person by the Zoning Commission, the
46 Board of Zoning Adjustment, or the Mayor’s Agent, 30 days after the date the decision or
47 order is published in the District of Columbia Register, or 30 days after the date the
48 decision or order is published on a website of the District government, whichever comes
49 first, unless a later date is consented to by all respondents listed in the petition for review;

50 and
51 “(C) Pleads, in its petition for judicial review, specific facts
52 sufficient to support the existence of a particularized harm suffered by the person and
53 that:

54 “(i) Substantial evidence of the particularized harm was
55 presented to the Zoning Commission, the Board of Zoning Adjustment, or the Mayor’s
56 Agent during the contested case;

57 “(ii) The person’s particularized harm relates to the zoning
58 relief granted or denied;

59 (iii) The person’s particularized harm is not shared by the
60 general public; and

61 “(iv) The particularized harm is capable of being redressed
62 by a favorable decision by the Court.

63 “(2) The Court shall not have jurisdiction under subsection (a) of this
64 section of a petition for judicial review of an order or decision of the Zoning
65 Commission, the Board of Zoning Adjustment, or the Mayor’s Agent that does not satisfy
66 the requirements set forth in paragraph (1) of this subsection.

67 “(3)(A)(i) The Court may, upon the motion of a party or intervenor in the
68 appeal who is the person in whose favor the order or decision in the contested case was
69 issued (the “prevailing party in the zoning decision”), require a person who filed a
70 petition for judicial review covered by this subsection (the “petitioner”) to file a bond of
71 sufficient surety in an amount the Court considers proper, not to exceed \$250,000, to
72 indemnify the prevailing party in the zoning decision against damages which such party
73 may sustain due to delays caused by the appeal; provided, that the likelihood and
74 estimated amount of damages is substantiated in the motion.

75 “(ii) In deciding whether to require such a bond and
76 determining the amount of the bond, if any, the Court shall consider the goal of
77 discouraging frivolous and vexatious appeals, the goal of not discouraging meritorious
78 appeals, the extent to which the delays caused by the appeal may harm the public interest,
79 the ability of the petitioner to pay the bond and the financial burden of the payment
80 relative to the petitioner’s means, and the apparent meritoriousness of the appeal.

81 “(B)(i) If the order or decision in the contested case is affirmed by
82 the Court, the Court may, if a bond was required under subparagraph (A) of this
83 paragraph and upon the motion of the prevailing party in the zoning decision, order the
84 petitioner to pay to the prevailing party in the zoning decision an amount the Court
85 considers proper to compensate the prevailing party in the zoning decision for the
86 damages it sustained due to delays caused by the appeal; provided, that the amount
87 ordered to be paid shall not exceed \$250,000.

88 “(ii) In determining whether to order such a payment, and
89 the amount of such payment to award, if any, the Court shall consider the extent to which
90 the prevailing party in the zoning decision has substantiated that it sustained damages due

91 to delays caused by the appeal, whether the delays caused by the appeal harmed the
92 public interest, the goal of discouraging frivolous and vexatious appeals, the goal of not
93 discouraging meritorious appeals, the ability of the petitioner to make the payment and
94 the financial burden of the payment relative to the petitioner's means, and the
95 meritoriousness of the appeal.
96 "(4) If the order or decision is affirmed by the Court and the Court finds
97 that the appeal was frivolous or filed for an improper purpose, such as to harass or to
98 cause unnecessary delay, the Court may order the petitioner to reimburse to the prevailing
99 party in the zoning decision reasonable attorney's fees and other costs incurred by it in

100 defending against the appeal in an amount not to exceed \$50,000.

101 "(5) For the purposes of this subsection, the term "Mayor's Agent" means
102 a person designated by the Mayor to issue orders or decisions in contested cases pursuant
103 to the Historic Landmark and Historic District Protection Act of 1978, effective March 3,
104 1979 (D.C. Law 2-144; D.C. Official Code § 6-1101 et seq.), or the individual to whom
105 such person has delegated the authority to issue orders or decisions in such contested
106 cases."

107 Sec. 3. Fiscal impact statement.

108 The Council adopts the fiscal impact statement in the committee report as the
109 fiscal impact statement required by section 4a of the General Legislative Procedures Act
110 of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

111 Sec. 4. Effective date.

112 This act shall take effect following approval by the Mayor (or in the event of veto
113 by the Mayor, action by the Council to override the veto), a 30-day period of
114 congressional review as provided in section 602(c)(1) of the District of Columbia Home
115 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
116 206.02(c)(1)), and publication in the District of Columbia Register.